

Tribute to a Partner

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David Katz and I casually knew each other, as most Toledo lawyers did, well before his friend, and our common sponsor, Senator Howard Metzenbaum, called us on a Thursday afternoon in late March of 1993. The Senator's message was brief and direct. He called to tell us that he and Senator John Glenn had agreed to recommend us to President Clinton for appointment as district judges to the United States District Court for the Northern District of Ohio.

It took another eighteen months before our professional partnership together got underway. At the time of his nomination, David was among the best regarded and respected lawyers in Toledo. After thirty-seven years as a lawyer, he had a reputation for intelligence and integrity. His list of clients, primarily businesses, was lengthy.

David was, moreover, a public citizen. He served on many boards, most notably that of St. Vincent's Hospital. Eventually, he became chairman of the board. What better mark of esteem could have been shown David, who was devoutly and proudly Jewish, than to direct the work of a major Catholic institution in a predominantly Catholic city?

For decades he was active in local, regional, and statewide Democratic politics. Twenty-five years before his call from Senator Metzenbaum, he had been among the Senator's closet private advisors. In addition, David served as the campaign treasurer for Senator Glenn during his 1992 senatorial campaign.

David was "active in politics," but not to fulfill his own ambitions. The grandson of Romanian immigrants, he was born and raised in modest circumstances. He grew up among people who worked hard and who deserved more than they were obtaining. Those experiences left a mark of understanding and a commitment to improving the lives of those whose backgrounds were like his. As an accomplished and successful lawyer, he often found himself representing clients of wealth, substance, and influence. However, he never forgot, and as a judge never overlooked, the needs and hopes of those less fortunate.

By 1993, David was willing to accept the call to the bench. The journey from a senator's recommendation to a presidential nomination has, during the past few decades, become an often unpleasant and difficult experience. This was due to the extraordinary prejudgment of one man, a lawyer from Bowling Green, Kentucky.

The American Bar Association, through its Standing Committee on the Federal Judiciary, has played a prominent role in the vetting of nominees for federal judgeships. As a bystander to that committee's treatment of David, I became, and remain, persuaded that the committee's role can be overly influential and undeserved.

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The committee consists of private attorneys, two members from the Ninth Circuit, one from each of the other federal circuits, and one member at large, who have the task of determining the qualifications of nominees to serve as federal judges.¹ The circuit member is solely responsible, or at least he was in David's case, for inquiring of those who knew of the nominee's professional work. Thereafter, the circuit representative reports on his or her findings to the full committee.

Suffice it to say, it is one man and, in effect, one vote. What the circuit representative concludes, the committee concurs. The mindset of one person can make or break the candidacy.

This nearly happened to David. It is to the credit and steadfastness of Senators Metzenbaum and Glenn that it did not.

The circuit representative, a trial lawyer, recommended that David be found not qualified due to a lack of trial experience. Even though twenty-five years ago academics and others were already lamenting about the "vanishing trial," that did not matter to the circuit representative. Nor did David's vastly more important experience of working with real people, with real problems. Likewise, David's experience and skill in solving problems without litigation mattered nothing to the circuit representative.

David bore the yoke of being labeled "unqualified" with dignity and grace. What the ABA could not see, others, such as the Senate and President did see. What they saw was that David Katz was extraordinarily well qualified, as few are, to do the job he performed with distinction for the ensuing twenty-plus years.

To be sure, he became an accomplished and admired courtroom judge. But that is a small part of what he did.

Federal district judges are no longer trial judges. We are sentencing, summary judgment, and settlement judges.

David was a master at settling cases. He acquired national stature for his abilities. He was among a handful of district judges who received repeated appointments from the Judicial Panel on Multidistrict Litigation in some of the largest and most challenging cases on the panel's docket. David's assignments were in the tens of thousands. Nearly none, once in his hands, went to trial.

This was work for which David was uniquely qualified. He was not just a judge's judge or a lawyer's judge. He was first and foremost the client's judge. He knew what it was for people to be involved in legal disputes and litigation. He knew firsthand how important it was, whenever possible, to avoid having the dispute being resolved in the courtroom, with all its uncertainties and expense. For David, the conference room was a better venue than the courtroom for resolving conflicts.

¹ *About Us*, AM. BAR ASS'N, http://www.americanbar.org/groups/committees/federal_judiciary/about_us.html [<https://perma.cc/RT4V-A7UC>].

The ABA made a mistake. Senators Metzenbaum and Glenn, and President Clinton, did not. Our community and country are fortunate for that, as am I.

When David's confirmation came a few months after my own, we became close partners in every sense of the word. But I knew, in terms of experience and insight, I was the junior in the firm. He was more than a friend and colleague, more than a companion; he was a mentor.

Being a judge, especially a federal district judge, is a solitary enterprise. When we need advice beyond the instruction the lawyers and our clerks are giving us, we have only one another from whom to seek and give advice. David would seek mine. I would seek his, and always to my benefit. During my term as Chief Judge, he was a welcomed and steady hand.

I was not alone in that respect. I was but one among countless others who, for nearly sixty years, turned to David Katz for insight and advice. What we all got, wherever we got it, was wise counsel, gladly given.

David's was a successful life at the bar. His work brought him a measure of prosperity, high standing in our community, and status as a distinguished federal judge. It also brought him a measure of deserved pride, especially as a judge.

I am certain that I am not alone in feeling somewhat adrift at his passing.